

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

February 10, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

STATEWIDE

SUBJECT: Report to the Board on the review of prior Administrative rule changes relating to fee increases for the small boat harbors, proposed in 2001, and deferred at that time.

PURPOSE On November 19, 2004 the Board adopted proposed rules changes to five HAR sections dealing with fee increases for the small boat harbors. As an additional task, the Board asked that DOBOR review the full 2001 comprehensive fee package that had come before the Board in October of 2001 and from which the five referred to fee sections had been taken.

DOBOR was asked to confer with the original partners who had helped develop this "100" page omnibus fee package to determine the suitability of re-submitting any or all of the remaining portions of the package to the Board for approval, and thereafter returning to the public hearing process on the various amendments.

REMARKS During December of 2004 and January of '05, boating's senior staff and those familiar with proposed rule amendments, spend several weeks reviewing the individual sections within the package and determining the suitable portions that were still valid and could or should be discussed with the original partners. It was estimated that approximately two thirds of the remaining sections still had some relevance but as the overall direction was that of a fee increase there was no assurance any individual items would be accepted. [A listing of major items by topic heading is attached.]

The Chair's Office was briefed on the key remaining sections where concerns or issues remained and policy direction was given to Boating on how to proceed, in general, and on specifics topics.

CON'T

The most critical issues centered around commercial boating activities originating from the small boat harbors and the permitting or renewal process for those companies. In January, DOBOR initiated a series of smaller preliminary meetings with key leaders of the commercial boating community and identified the areas where there was, or was not, agreement.

On Friday, February 14, 2005 a major conference call was arranged between 4 senior boating staffers and 5 representatives of OTC and H3A to discuss the remaining commercial areas which were still unsettled from the smaller working group sessions.

The two key issues remaining were:

Burden of Proof §13-231-32 (6)

It was initially written that during an internal or departmental hearing, the burden of proof as to why an action was or was not taken, or why a permit was or was not renewed, would shifted to the Department to prove or disprove its actions, eg; records of non-payments, certificates of good standing, etc.

It was subsequently noted that the Attorney General's Office had reviewed this provision and found it was contrary to HRS Chp. 9, and would not be allowed.

Shall vs. May §13-231-61 (b)

A condition was drafted into the original rules that the Department be required to re-issue all permits under a "shall" provision, versus the existing "may be renewed" language.

Besides the unworkable nature of such a provision when tied to the burden of proof issue, it was felt by the Administration that the ultimate responsibility for stewardship of our natural resources must remain with the department and that is best accomplished through the use of "may" within the rules.

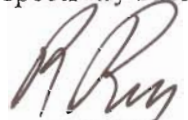
There was no substantial movement or agreement on either side relative to these two points and a re-cap of the positions was also submitted for legal review. Ultimately it was determined that the State would not accept either position and the talks ended.

[Subsequently the commercial boating interest lobby for and had Act 126 passed by the 2005 Legislature. This Act related to commercial fees and although not directly related to the deadlocked issues it seems to be the basis for an ongoing working relationship.]

SUMMATION

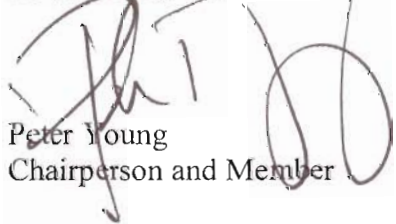
The all or none impasse mentioned above was again slightly broken when the Legislature passed Act 126 last year raising the commercial fee rate to 3% of gross receipts. Current policy issues such as the long term disposition of the harbors, ocean user conflicts, and a welcomed crush of new construction projects, has temporally moved some of these lesser issues to the back burner (eg; parking fees, live-a-board rules, utility billings, etc.). Given the proper time & resources certain areas within the rules will be re-visited but perhaps not as an omnibus package.

Respectfully submitted,



Richard K Rice
Administrator

APPROVED FOR SUBMITTAL:



Peter Young
Chairperson and Member

Attachment

Selected topic headings from Omnibus rules package

§ 13-230-4 Penalties and prosecutions.	Technical adjustment to rules.
§ 13-231-3 Use permits,	Refined definitions of permits
§ 13-231-6 Revocation of use permits	Modifies the process
§ 13-231-31 Administrative hearing	New or modified process
§ 13-231-32 Rules of evidence	Burden of Proof issue
§ 13-231-33 Informal review process	A new process to be added
§ 13-231-45 Vessel inspections	Modifies the process
§ 13-231-51 Commercial activities	Several changes in the section
§ 13-231-58 Limit # permits per harbor	Modifies total allowed
§ 13-231-61 Renewal of comm'l permits	Shall vs May
§ 13-231-62 Transfer of comm'l permits	Modifies the process
§ 13-233-6 Parking fees	New and modified rules
§ 13-234-3, 4, 5 Mooring rates	Submitted for Board action
§ 13-234-8 Stay-aboard rates	Modifies the rule
§ 13-234-25 Comm'l permit fees	Passed by Act 126, in 2005
§ 13-234-26 Cruise ship landing fees	Pending Board action
§ 13-234-33 Business transfer fees	Modifies the rule
§ 13-234-34 Recreational ramp fees	Submitted for Board action
§ 13-244-19 Special event permits	Modifies the rule
§ 13-253-1 Equipment registration fees	Modifies the rule
§ 13-253-5 thru § 13-256-89 cover sections on specific issues such as catamarans, thrill craft, or areas such as Hanalei and Waialae-Kahala.	